

REMARKS

Claims 29-54 are rejected.

Claims 29-54 are pending.

The Examiner rejected Claims 29-54 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent 6,601,101 to *Lee et al.* hereafter (*Lee*), however the Examiner only specifically rejected Claims 29-38 and Claims 42-51. The Applicant assumes this was a typographical error.

I. REJECTION UNDER U.S.C. §102(e)

The Examiner rejected Claims 29-38 and Claims 42-51 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent 6,601,101 to *Lee et al.* hereafter (*Lee*).

For a reference to anticipate a claimed invention, the reference must disclose every aspect of the claimed invention. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989).

Claims 29-30 and 42-43. Claim 29 is directed to a method providing network attached storage (NAS) services comprising four steps. In step 1, a distributed processing system is configured by coupling a multiplicity of distributed devices using a network, wherein each of the distributed devices is enabled by a client agent program to process first workloads for the distributed processing system. In step 2, the client agent program is configured to have a software-based NAS component to assess unused or under-utilized storage resources in selected distributed devices from the multiplicity distributed devices. In step 3, a representation by the software-based NAS component is generated that the selected distributed devices are each NAS

devices having an available amount of storage resources selected from the unused and under-utilized storage resources. In step 4, data storage and access workloads are processed for the distributed processing system by accessing data from or storing data into portions of the available amounts of storage resources of the selected distributed devices to provide the NAS services to client devices coupled to the network.

The Applicant respectfully asserts that the Examiner, in his belief that Lee teaches the second step of the present invention, failed to see that the present invention recites the step "configuring the client agent program to have a software-based (NAS) component and to assess unused or under-utilized resources in the selected distributed devices." The Examiner stated that Lee teaches "configuring the client agent program to have a software-based (NAS) component and to access unused or under-utilized resources in the selected distributed devices." The present invention recites assessing (evaluate, judge, appraise) and not accessing (right of entry, admission). The present invention and the Examiner's assertion are clearly different. Therefore, the Examiner is relying upon an incorrect factual predicate in making his rejection. *In re Rouffet*, 47 U.S.P.Q. 2d 1453, 1455 (Fed. Cir. 1998).

The present invention is directed to configuring distributed devices coupled to a network (enabled by a client agent program to process workloads for the distributed processing system) and then configuring the client agent program to assess under or unutilized storage resources in the selected distributed devices from the distributed devices. Lee teaches the configuration of a network using dedicated NAS devices wherein access to the networked NAS devices is transparent to a user (the user does not need to know where his data is stored). The present invention configures a representation of NAS devices using distributed devices wherein the client agent assesses what unused storage resources are available in the selected distributed devices. Lee does not teach or suggest step 2) of the present invention.

Since Lee does not teach or suggest step 2) of the present invention, then Lee does not disclose every aspect of the present invention as required. Therefore, the

Applicant asserts that the Examiner has failed to make a *prima facie* case of anticipation. Therefore, the Applicant respectfully asserts the rejection of Claim 29 under 35 U.S.C. §102(e) as being anticipated by *Lee* is traversed by the above arguments.

Claim 30 depends from Claim 29 and contains all the limitations of Claim 29. The Examiner rejected Claims 30 using the same reasoning relative to Claim 29. Therefore, the Applicant respectfully asserts the rejection of Claim 30 under 35 U.S.C. §102(e) as being anticipated by *Lee* is traversed by the above arguments and for the same reasons as Claim 29.

Claim 42 is an apparatus claim implementing the method steps of Claim 29. The Examiner rejected Claim 42 for the same reasons as Claim 29. Therefore, the Applicant respectfully asserts the rejection of Claim 42 under 35 U.S.C. §102(e) as being anticipated by *Lee* is traversed by the above arguments and for the same reasons as Claim 29.

Claim 43 is dependent from Claim 42 and contains all the limitations as Claim 42. Claim 43 adds the same limitations to Claim 43 as Claim 30 adds to Claim 29. The Examiner rejected Claim 43 for the same reasons as Claim 29. Therefore, the Applicant respectfully asserts the rejection of Claim 43 under 35 U.S.C. §102(e) as being anticipated by *Lee* is traversed by the above arguments and for the same reasons as Claim 42 and Claim 29.

Claims 31 and 44. Claim 31 is dependent from Claim 29 and contains all the limitations as Claim 29. Claim 31 adds the limitation that at least one of the selected distributed devices is enabled by the client agent program to function as a location distributed device to store location information for data stored by the selected distributed devices. The Applicant has shown that *Lee* does not teach or suggest the invention of Claim 29. Therefore, the Applicant respectfully asserts the rejection of Claim 31 under 35 U.S.C. §102(e) as being anticipated by *Lee* is traversed by the above arguments and for the same reasons as Claim 29.

Claim 44 is dependent from Claim 42 and contains all the limitations as Claim 42. Claim 44 adds the limitation that at least one of the selected distributed devices is enabled by the client agent program to function as a location distributed device to store location information for data stored by the selected distributed devices. The Applicant has shown that Lee does not teach or suggest the invention of Claim 42. Therefore, the Applicant respectfully asserts the rejection of Claim 44 under 35 U.S.C. §102(e) as being anticipated by Lee is traversed by the above arguments and for the same reasons as Claim 42 and Claim 29.

Claims 32 and 45. Claim 32 is dependent from Claim 31 and contains all the limitations as Claim 31. Claim 32 adds the step of enabling the location distributed device to receive data storage and access requests from the client devices coupled to the network and to direct the client devices to the selected distributed devices storing the requested data. The Applicant has shown that Lee does not teach or suggest the invention of Claim 31. Therefore, the Applicant respectfully asserts the rejection of Claim 32 under 35 U.S.C. §102(e) as being anticipated by Lee is traversed by the above arguments and for the same reasons as Claim 31 and Claim 29.

Claim 45 is dependent from Claim 44 and contains all the limitations as Claim 44. Claim 45 adds the limitation that the location distributed device is enabled to receive data storage and access requests from the client devices coupled to the network and to direct the client devices to the selected distributed devices storing the requested data. The Applicant has shown that Lee does not teach or suggest the invention of Claim 44. Therefore, the Applicant respectfully asserts the rejection of Claim 45 under 35 U.S.C. §102(e) as being anticipated by Lee is traversed by the above arguments and for the same reasons as Claim 44 and Claim 29.

Claims 33 and 46. Claim 33 is dependent from Claim 32 and contains all the limitations as Claim 32. Claim 33 adds the step of managing the NAS services at least in part utilizing at least one centralized server system. The Applicant has shown that Lee does not teach or suggest the invention of Claim 32. Therefore, the

Applicant respectfully asserts the rejection of Claim 33 under 35 U.S.C. §102(e) as being anticipated by *Lee* is traversed by the above arguments and for the same reasons as Claim 32 and Claim 29.

Claim 46 is dependent from Claim 45 and contains all the limitations as Claim 45. Claim 46 adds the limitation that the NAS services are managed at least in part utilizing at least one centralized server system. The Applicant has shown that *Lee* does not teach or suggest the invention of Claim 45. Therefore, the Applicant respectfully asserts the rejection of Claim 46 under 35 U.S.C. §102(e) as being anticipated by *Lee* is traversed by the above arguments and for the same reasons as Claim 45 and Claim 29.

Claims 34 and 47. Claim 34 is dependent from Claim 33 and contains all the limitations as Claim 33. Claim 34 adds limitation that the centralized server system downloads the NAS component to the client agent programs in the distributed devices. The Applicant has shown that *Lee* does not teach or suggest the invention of Claim 33. Therefore, the Applicant respectfully asserts the rejection of Claim 34 under 35 U.S.C. §102(e) as being anticipated by *Lee* is traversed by the above arguments and for the same reasons as Claim 33 and Claim 29.

Claim 47 is dependent from Claim 46 and contains all the limitations as Claim 46. Claim 47 adds the limitation that the centralized server system downloads the NAS component to the client agent programs in the distributed devices. The Applicant has shown that *Lee* does not teach or suggest the invention of Claim 46. Therefore, the Applicant respectfully asserts the rejection of Claim 47 under 35 U.S.C. §102(e) as being anticipated by *Lee* is traversed by the above arguments and for the same reasons as Claim 46 and Claim 29.

Claims 35 and 48. Claim 35 is dependent from Claim 33 and contains all the limitations as Claim 33. Claim 35 adds limitation that the centralized server system stores location information for data stored in the selected distributed devices and at least in part directs the client devices to the distributed devices storing the requested

data. The Applicant has shown that Lee does not teach or suggest the invention of Claim 33. Therefore, the Applicant respectfully asserts the rejection of Claim 35 under 35 U.S.C. §102(e) as being anticipated by *Lee* is traversed by the above arguments and for the same reasons as Claim 33 and Claim 29.

Claim 48 is dependent from Claim 46 and contains all the limitations as Claim 46. Claim 48 adds the limitation that the centralized server system stores location information for data stored in the selected distributed devices and at least in part directs the client devices to the distributed devices storing the requested data. The Applicant has shown that Lee does not teach or suggest the invention of Claim 46. Therefore, the Applicant respectfully asserts the rejection of Claim 48 under 35 U.S.C. §102(e) as being anticipated by *Lee* is traversed by the above arguments and for the same reasons as Claim 46 and Claim 29.

Claims 36 and 49. Claim 36 is dependent from Claim 35 and contains all the limitations as Claim 35. Claim 36 adds the step of utilizing the centralized server system to receive data storage and access requests from the client devices and to route data storage and access workloads to the selected distributed devices based in part upon individual capabilities of the selected distributed devices, wherein the individual capabilities are stored in a capabilities database coupled to the centralized server system. The Applicant has shown that Lee does not teach or suggest the invention of Claim 35. Therefore, the Applicant respectfully asserts the rejection of Claim 36 under 35 U.S.C. §102(e) as being anticipated by *Lee* is traversed by the above arguments and for the same reasons as Claim 35 and Claim 29.

Claim 49 is dependent from Claim 48 and contains all the limitations as Claim 48. Claim 49 adds the limitation that the centralized server system is utilized to receive data storage and access requests from the client devices and to route data storage and access workloads to the selected distributed devices based in part upon individual capabilities of the selected distributed devices, wherein the individual capabilities are stored in a capabilities database coupled to the centralized server

system. The Applicant has shown that Lee does not teach or suggest the invention of Claim 48. Therefore, the Applicant respectfully asserts the rejection of Claim 49 under 35 U.S.C. §102(e) as being anticipated by Lee is traversed by the above arguments and for the same reasons as Claim 48 and Claim 29.

Claims 37 and 50. Claim 37 is dependent from Claim 29 and contains all the limitations as Claim 29. Claim 37 adds the limitation that the network is the Internet. The Applicant has shown that Lee does not teach or suggest the invention of Claim 29. Therefore, the Applicant respectfully asserts the rejection of Claim 37 under 35 U.S.C. §102(e) as being anticipated by Lee is traversed by the above arguments and for the same reasons as Claim 29.

Claim 50 is dependent from Claim 42 and contains all the limitations as Claim 42. Claim 50 adds the limitation that the network is the Internet. The Applicant has shown that Lee does not teach or suggest the invention of Claim 42. Therefore, the Applicant respectfully asserts the rejection of Claim 50 under 35 U.S.C. §102(e) as being anticipated by Lee is traversed by the above arguments and for the same reasons as Claim 42 and Claim 29.

Claims 38 and 51. Claim 38 is dependent from Claim 29 and contains all the limitations as Claim 29. Claim 38 adds the step of managing storage resources for the selected distributed devices using a storage priority control that facilitates full use of the available amounts of storage resources. The Applicant has shown that Lee does not teach or suggest the invention of Claim 29. Therefore, the Applicant respectfully asserts the rejection of Claim 38 under 35 U.S.C. §102(e) as being anticipated by Lee is traversed by the above arguments and for the same reasons as Claim 29.

Claim 51 is dependent from Claim 42 and contains all the limitations as Claim 42. Claim 51 adds the limitation that the storage resources are managed for the selected distributed devices using a storage priority control that facilitates full use of the available amounts of storage resources. The Applicant has shown that Lee does not teach or suggest the invention of Claim 42. Therefore, the Applicant respectfully

asserts the rejection of Claim 51 under 35 U.S.C. §102(e) as being anticipated by *Lee* is traversed by the above arguments and for the same reasons as Claim 42 and Claim 29.

II. REJECTION UNDER 35 U.S.C. § 103(a)

The Examiner rejected Claims 39-41 and 52-54 under 35 U.S.C. § 103(a) as being unpatentable over *Lee*.

To establish a *prima facie* case of obviousness, the Examiner must meet three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be some reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim limitations.

Claims 39-41. The Examiner states that *Lee* teaches all the limitations of Claims 38 and 51. The Applicant asserts that *Lee* fails to teach the step of "configuring the client agent program to have a software-based NAS component to assess unused or under-utilized storage resources in selected distributed devices from the multiplicity distributed devices." in independent Claim 29. Thus, the Examiner failed to show that *Lee* teaches or suggest this step and thus fails to make a *prima facie* case of obviousness for Claim 38 that depends from Claim 29. The Examiner states that Lee fails to explicitly teach the method including the limitation of Claims 39, 40 and 41. However the Examiner takes "official notice" that the limitations of Claims 39, 40, and 41 are old and well known in the art without giving any support for this "official notice." Regardless of the "official notice", the Applicant asserts that the Examiners failure to make a *prima facie* case of obviousness for Claim 38 that depends from Claim 29 renders the "official notice" moot.

However, the Applicant reminds the Examiner that "official notice" without documentary evidence to support the Examiner's conclusion is permissible only in

some circumstances. See MPEP 2144.03. Official notice unsupported by documentary evidence should only be taken by the Examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well known. Assertion of technical facts in areas of esoteric technology or an assertion of specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. *In re Ahlert*, 424 F.2d at 1091, 165 USPQ at 420-421. See also *In re Grose*, 592 F.2d 1161, 1167-68, 201 USPQ 57, 63 (CCPA 1979).

The Examiner rejected Claims 52-54 on the same reasons as Claims 39-41. Therefore the Applicant asserts that the rejections of Claims 39-41 and Claims 52-54 under 35 U.S.C. § 103(a) as being unpatentable over *Lee* are traversed by the above arguments.

III. CONCLUSION

The Applicant has traversed the rejections of Claims 29-38 and Claims 42-51 under 35 U.S.C. § 102(e) as being anticipated by *Lee*.

The Applicant has traversed the rejections of Claims 39-41 and 52-54 under 35 U.S.C. § 102(e) as being unpatentable by *Lee* over the Examiners "Official Action".


The Applicant respectfully asserts that Claims 29-54 are in condition for allowance and request an early allowance of these claims.

Applicant respectfully requests that the Examiner call Applicant's attorney at the below listed number if the Examiner believes that such a discussion would be helpful in resolving any remaining problems.

Respectfully submitted,

WINSTEAD SECHREST & MINICK P.C.

Patent Agent and Attorney for Applicant

By: 
Richard F. Frankeny
Reg. No. 47,573
Kelly K. Kordzik
Reg. No. 36,571

P.O. Box 50784
Dallas, Texas 75201
(512) 370-2872